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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

KATHRYN GAYLE ROSALES,

Defendant and Appellant.

B208197

(Los Angeles County  
Super. Ct. No. K081474)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Wade Olson, Judge. Affirmed as modified.

Jeffrey S. Kross, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General,  
Keith H. Borjon and John R. Gorey, Deputy Attorneys General, for Plaintiff and  
Respondent.

Kathryn Gayle Rosales appeals from the judgment entered following her guilty plea to possession for sale of methamphetamine (Health & Saf. Code, § 11378) and her admission that she previously was convicted of a serious or violent felony within the meaning of the “Three Strikes” law (Pen. Code, §§ 667, subds. (b)-(i) & 1170.12, subds. (a)-(d)). Pursuant to her negotiated plea, she was sentenced to prison for 16 months, doubled to 32 months by reason of her prior strike conviction, and the charge of transportation of a controlled substance (Health & Saf. Code, § 11379, subd. (a)) and remaining allegations were dismissed. She contends the matter should be remanded with directions that the court correct and specify the amounts of penalty assessments and surcharges related to the \$50 lab analysis fee. For reasons stated in the opinion, we modify the imposition of penalty assessments and surcharges and affirm the judgment in all other respects.

### **FACTUAL AND PROCEDURAL SUMMARY**

According to the probation report, on December 15, 2007, appellant stepped into the path of a police vehicle. While being questioned concerning her safety, appellant stated she believed she had an outstanding warrant. A record search was conducted, and appellant was arrested for the warrant. When she was searched, a bag of crystal methamphetamine was recovered.

### **DISCUSSION**

At the sentencing hearing, appellant was ordered to pay a \$50 laboratory analysis fee, plus a penalty assessment, plus a 20 percent surcharge, a \$200 restitution fine, and a \$200 parole restitution fine, which was suspended unless she violated parole once she was released. She was also ordered to pay a \$20 court fee. The minute order and the abstract of judgment state the court imposed, pursuant to Health and Safety Code section 11372.5, a lab analysis fee of \$50, plus penalty assessments in the amount of \$120, and a surcharge fee of \$10, for a total of \$180.

Appellant contends there should be a maximum of \$120 in penalty assessments and surcharges on the \$50 laboratory analysis fee and she is uncertain how the court arrived at a total of \$180 in fees, assessments, and surcharges. Respondent contends that

the total amount of penalty assessments in this case should be \$100, rather than \$120 and, given the mandatory nature of the penalty assessments and state surcharge, it is not necessary to remand the case to the trial court as this court can modify the abstract to accurately reflect the state surcharge and penalties imposed.

Health and Safety Code section 11372.5, subdivision (a) provides in pertinent part, “Every person who is convicted of a violation of Section . . . 11378 . . . shall pay a criminal laboratory analysis fee in the amount of fifty dollars (\$50) for each separate offense.” (See *People v. Turner* (2002) 96 Cal.App.4th 1409, 1413.)

Pursuant to Penal Code section 1464, subdivision (a), a mandatory \$50 state penalty assessment is required to be imposed on the \$50 criminal laboratory analysis fee. Penal Code section 1464, subdivision (a)(1) provides in relevant part: “Subject to Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code, and except as otherwise provided in this section, there shall be levied a state penalty in the amount of ten dollars (\$10) for every ten dollars (\$10), or part of ten dollars (\$10), upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses . . . .” (See *People v. Talibdeen* (2002) 27 Cal.4th 1151, 1153-1154.)

The trial court is also required to impose a mandatory penalty assessment of \$35 pursuant to Government Code section 76000. Government Code section 76000 provides that “there shall be levied an additional penalty of seven dollars (\$7) for every ten dollars (\$10) or fraction thereof which shall be collected together with and in the same manner as the amounts established by Section 1464 of the Penal Code, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses . . . .” (*People v. Talibdeen, supra*, 27 Cal.4th at p. 1154.)

The \$50 laboratory analysis fee is also subject to a 20 percent surcharge pursuant to Penal Code section 1465.7, subdivision (a), which provides that “[a] state surcharge of 20 percent shall be levied on the base fine used to calculate the state penalty assessment as specified in subdivision (a) of Section 1464.”

Additionally, the laboratory analysis fee is also subject to a state court construction penalty under Government Code section 70372. Government Code section

70372, subdivision (a) provides in pertinent part, “(1) Except as otherwise provided in subdivision (b) of Section 70375 and in this article, there shall be levied a state court construction penalty, in the amount of five dollars (\$5) for every ten dollars (\$10), or part of ten dollars (\$10), upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses . . . . This penalty is in addition to any other state or local penalty, including, but not limited to, the penalty provided by Section 1464 of the Penal Code and Section 76000. [¶] (2) The amount of the court construction penalty may be reduced by a county as provided in subdivision (b) of Section 70375.” As explained in *People v. McCoy* (2007) 156 Cal.App.4th 1246, 1251-1257, the \$25 court construction fee should be reduced to \$15 pursuant to Government Code section 70375, subdivision (b).

### **DISPOSITION**

The judgment is modified to reflect imposition of a \$50 penalty assessment on the laboratory analysis fee under Penal Code section 1464, subdivision (a); a \$35 penalty assessment on the laboratory analysis fee under Government Code section 76000; a \$10 state surcharge on the laboratory analysis fee under Penal Code section 1465.7, subdivision (a); and a \$15 state construction penalty under Government Code section 70372, subdivision (a)(1), as reduced under Government Code section 70375, subdivision (b). The trial court is directed to prepare a corrected abstract of judgment and forward a certified copy to the Department of Corrections and Rehabilitation and in all other respects, the judgment is affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.